

# SENATE MOTION

**MADAM PRESIDENT:**

**I move** that Engrossed House Bill 1162 be amended to read as follows:

- 1       Page 1, between the enacting clause and line 1, begin a new  
2       paragraph and insert:  
3       "SECTION 1. IC 13-11-2-71.2 IS ADDED TO THE INDIANA  
4       CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
5       [EFFECTIVE JULY 1, 2009]: **Sec. 71.2. "Environmental restrictive**  
6       **ordinance"** means, with respect to land, any ordinance that:  
7       **(1) is adopted by a municipal corporation (as defined in**  
8       **IC 36-1-2-10); and**  
9       **(2) limits, regulates, or prohibits any of the following with**  
10      **respect to groundwater:**  
11      **(A) Withdrawal.**  
12      **(B) Human consumption.**  
13      **(C) Any other use.**  
14      SECTION 2. IC 13-11-2-71.4 IS ADDED TO THE INDIANA  
15      CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
16      [EFFECTIVE JULY 1, 2009]: **Sec. 71.4. "Environmental trust**  
17      **fund", for purposes of IC 13-19-6, refers to the environmental trust**  
18      **fund established by IC 13-19-6-1.**  
19      SECTION 3. IC 13-11-2-110.2 IS ADDED TO THE INDIANA  
20      CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
21      [EFFECTIVE JULY 1, 2009]: **Sec. 110.2. "Institutional control**  
22      **registry", for purposes of IC 13-19-6, refers to the institutional**  
23      **control registry established by IC 13-19-6-1.**  
24      SECTION 4. IC 13-11-2-148, AS AMENDED BY P.L.221-2007,  
25      SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
26      JULY 1, 2009]: **Sec. 148. (a) "Operator", for purposes of IC 13-18-10,**  
27      **means the person in direct or responsible charge or control of one (1)**  
28      **or more confined feeding operations.**  
29      **(b) "Operator", for purposes of IC 13-18-11 and environmental**  
30      **management laws, means the person in direct or responsible charge and**  
31      **supervising the operation of:**

- 1 (1) a water treatment plant;
- 2 (2) a wastewater treatment plant; or
- 3 (3) a water distribution system.
- 4 (c) "Operator", for purposes of IC 13-20-6, means a corporation, a
- 5 limited liability company, a partnership, a business association, a unit,
- 6 or an individual who is a sole proprietor that is one (1) of the following:
- 7 (1) A broker.
- 8 (2) A person who manages the activities of a transfer station that
- 9 receives municipal waste.
- 10 (3) A transporter.
- 11 (d) "Operator", for purposes of IC 13-23, except as provided in
- 12 **subsection subsections (e), (g), and (h)**, means a person:
- 13 (1) in control of; or
- 14 (2) having responsibility for;
- 15 the daily operation of an underground storage tank.
- 16 (e) "Operator", for purposes of IC 13-23-13, does not include the
- 17 following:
- 18 (1) A person who:
- 19 (A) does not participate in the management of an underground
- 20 storage tank;
- 21 (B) is otherwise not engaged in the:
- 22 (i) production;
- 23 (ii) refining; and
- 24 (iii) marketing;
- 25 of regulated substances; and
- 26 (C) holds evidence of ownership, primarily to protect the
- 27 owner's security interest in the tank.
- 28 (2) A person who:
- 29 (A) does not own or lease, directly or indirectly, the facility or
- 30 business at which the underground storage tank is located;
- 31 (B) does not participate in the management of the facility or
- 32 business described in clause (A); and
- 33 (C) is engaged only in:
- 34 (i) filling;
- 35 (ii) gauging; or
- 36 (iii) filling and gauging;
- 37 the product level in the course of delivering fuel to an
- 38 underground storage tank.
- 39 (3) A political subdivision (as defined in IC 36-1-2-13) or unit of
- 40 federal or state government that:
- 41 (A) acquires ownership or control of an underground storage
- 42 tank on a brownfield because of:
- 43 (i) bankruptcy;
- 44 (ii) foreclosure;
- 45 (iii) tax delinquency, including an acquisition under
- 46 IC 6-1.1-24 or IC 6-1.1-25;
- 47 (iv) abandonment;

(v) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;

(vi) receivership;

(vii) transfer from another political subdivision or unit of federal or state government;

(viii) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;

(ix) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired an interest in the property because of the political subdivision's or unit's function as sovereign; or

(x) any other means to conduct remedial actions on a brownfield; and

(B) is engaged only in activities in conjunction with:

(i) investigation or remediation of hazardous substances, petroleum, and other pollutants associated with a brownfield, including complying with land use restrictions and institutional controls; or

(ii) monitoring or closure of an underground storage tank; unless existing contamination on the brownfield is exacerbated due to gross negligence or intentional misconduct by the political subdivision or unit of federal or state government.

(f) For purposes of subsection (e)(3)(B), reckless, willful, or wanton misconduct constitutes gross negligence.

**(g) "Operator" does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.**

**(h) "Operator" does not include a person that meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.**

SECTION 5. IC 13-11-2-150, AS AMENDED BY P.L.221-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 150. (a) "Owner", for purposes of IC 13-23 (except as provided in subsections (b), (c), ~~and (d)~~ (d), (e), and (f)) means:

(1) for an underground storage tank that:

- 1 (A) was:
  - 2 (i) in use on November 8, 1984; or
  - 3 (ii) brought into use after November 8, 1984;
- 4 for the storage, use, or dispensing of regulated substances, a
- 5 person who owns the underground storage tank; or
- 6 (B) is:
  - 7 (i) in use before November 8, 1984; but
  - 8 (ii) no longer in use on November 8, 1984;
- 9 a person who owned the tank immediately before the
- 10 discontinuation of the tank's use; or
- 11 (2) a person who conveyed ownership or control of the
- 12 underground storage tank to a political subdivision (as defined in
- 13 IC 36-1-2-13) or unit of federal or state government because of:
  - 14 (A) bankruptcy;
  - 15 (B) foreclosure;
  - 16 (C) tax delinquency, including a conveyance under
  - 17 IC 6-1.1-24 or IC 6-1.1-25;
  - 18 (D) abandonment;
  - 19 (E) the exercise of eminent domain, including any purchase of
  - 20 property once an offer to purchase has been tendered under
  - 21 IC 32-24-1-5;
  - 22 (F) receivership;
  - 23 (G) acquiring an area needing redevelopment (as defined in
  - 24 IC 36-7-1-3) or conducting redevelopment activities,
  - 25 specifically under IC 36-7-14-22.2, IC 36-7-14-22.5,
  - 26 IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
  - 27 (H) other circumstances in which a political subdivision or
  - 28 unit of federal or state government involuntarily acquired
  - 29 ownership or control because of the political subdivision's or
  - 30 unit's function as sovereign; or
  - 31 (I) any other means to conduct remedial actions on a
  - 32 brownfield;
- 33 if the person was a person described in subdivision (1)
- 34 immediately before the person conveyed ownership or control of
- 35 the underground storage tank.
- 36 (b) "Owner", for purposes of IC 13-23-13, does not include a person
- 37 who:
  - 38 (1) does not participate in the management of an underground
  - 39 storage tank;
  - 40 (2) is otherwise not engaged in the:
    - 41 (A) production;
    - 42 (B) refining; and
    - 43 (C) marketing;
  - 44 of regulated substances; and
  - 45 (3) holds indicia of ownership primarily to protect the owner's
  - 46 security interest in the tank.
- 47 (c) "Owner", for purposes of IC 13-23, does not include a political

subdivision (as defined in IC 36-1-2-13) or unit of federal or state government that acquired ownership or control of an underground storage tank because of:

- (1) bankruptcy;
- (2) foreclosure;
- (3) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;
- (4) abandonment;
- (5) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;
- (6) receivership;
- (7) transfer from another political subdivision or unit of federal or state government;
- (8) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
- (9) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or
- (10) any other means to conduct remedial actions on a brownfield;

unless the political subdivision or unit of federal or state government causes or contributes to the release or threatened release of a regulated substance, in which case the political subdivision or unit of federal or state government is subject to IC 13-23 in the same manner and to the same extent as a nongovernmental entity under IC 13-23.

(d) "Owner", for purposes of IC 13-23, does not include a nonprofit corporation that acquired ownership or control of an underground storage tank to assist and support a political subdivision's revitalization and reuse of a brownfield for noncommercial purposes, including conservation, preservation, and recreation, unless the nonprofit corporation causes or contributes to the release or threatened release of a regulated substance, in which case the nonprofit corporation is subject to IC 13-23 in the same manner and to the same extent as any other nongovernmental entity under IC 13-23.

**(e) "Owner" does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.**

**(f) "Owner" does not include a person that meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under**

**Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.**

SECTION 6. IC 13-11-2-151, AS AMENDED BY P.L.221-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 151. (a) "Owner or operator", for purposes of IC 13-24-1, means the following:

(1) For a petroleum facility, a person who owns or operates the facility.

(2) For a petroleum facility where title or control has been conveyed because of:

(A) bankruptcy;

(B) foreclosure;

(C) tax delinquency, including a conveyance under IC 6-1.1-24 or IC 6-1.1-25;

(D) abandonment;

(E) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;

(F) receivership;

(G) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;

(H) other circumstances in which a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government involuntarily acquired title or control because of the political subdivision's or unit's function as sovereign; or

(I) any other means to conduct remedial actions on a brownfield;

to a political subdivision or unit of federal or state government, a person who owned, operated, or otherwise controlled the petroleum facility immediately before title or control was conveyed.

(b) Subject to subsection (c), the term does not include a political subdivision or unit of federal or state government that acquired ownership or control of the facility through:

(1) bankruptcy;

(2) foreclosure;

(3) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;

(4) abandonment;

(5) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;

(6) receivership;

(7) transfer from another political subdivision or unit of federal or state government;

(8) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;

(9) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or

(10) any other means to conduct remedial actions on a brownfield.

(c) The term includes a political subdivision or unit of federal or state government that causes or contributes to the release or threatened release of a regulated substance, in which case the political subdivision or unit of federal or state government is subject to IC 13-24-1:

(1) in the same manner; and

(2) to the same extent;

as a nongovernmental entity under IC 13-24-1.

(d) The term does not include a person who:

(1) does not participate in the management of a petroleum facility;

(2) is otherwise not engaged in the:

(A) production;

(B) refining; and

(C) marketing;

of petroleum; and

(3) holds evidence of ownership in a petroleum facility, primarily to protect the owner's security interest in the petroleum facility.

(e) The term does not include a nonprofit corporation that acquired ownership or control of a facility to assist and support a political subdivision's revitalization and reuse of a brownfield for noncommercial purposes, including conservation, preservation, and recreation, unless the nonprofit corporation causes or contributes to the release or threatened release of a regulated substance, in which case the nonprofit corporation is subject to IC 13-24-1 in the same manner and to the same extent as any other nongovernmental entity under IC 13-24-1.

**(f) The term does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-24-1 of liability for a release of petroleum, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.**

**(g) The term does not include a person that meets, for purposes of the determination under IC 13-24-1 of liability for a release of petroleum, the exemption criteria under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance,**

**except that the person acquires ownership of the facility after June 30, 2009.**

SECTION 7. IC 13-11-2-193.5, AS AMENDED BY P.L.18-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 193.5. "Restrictive covenant" means, with respect to land, any deed restriction, restrictive covenant, environmental covenant, environmental notice, or other restriction or obligation that:

(1) limits the use of the land or the activities that may be performed on or at the land or requires the maintenance of any engineering control on the land designed to protect human health or the environment;

(2) by its terms is intended to run with the land and be binding on successors;

(3) is recorded with the county recorder's office in the county in which the land is located; ~~and~~

(4) explains how it can be modified or terminated;

**(5) grants the department access to the land;**

**(6) requires notice to a transferee of:**

**(A) the land; or**

**(B) an interest in the land;**

**of the existence of the restrictive covenant; and**

**(7) identifies the means by which the environmental files at the department that apply to the land can be located.**

SECTION 8. IC 13-11-2-233.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 233.5. "Tract", for purposes of this chapter **and IC 13-19-6**, means any area of land that is under common ownership and is contained within a continuous border.

SECTION 9. IC 13-12-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) The remediation and closure goals, objectives, and standards for activities:

**(1) conducted under IC 13-22 and IC 13-23; and**

**(2) completed before July 1, 2009;**

shall be consistent with the remediation objectives set forth in IC 13-25-5-8.5.

**(b) The remediation and closure goals, objectives, and standards for all remediation projects that:**

**(1) are conducted under IC 13-22, IC 13-23, IC 13-24, and IC 13-25-4; and**

**(2) are:**

**(A) in progress on July 1, 2009; or**

**(B) initiated after July 1, 2009;**

**shall be consistent with the remediation objectives set forth in IC 13-25-5-8.5.**

~~(b)~~ **(c)** The groundwater quality standards adopted under IC 13-18-17-5 shall allow, as appropriate, groundwater remediations to be consistent with the remediation objectives set forth in



1 IC 13-25-5-8.5.

2 SECTION 10. IC 13-14-2-6 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. Except as provided  
4 in IC 13-14-6, the commissioner may proceed in court, by appropriate  
5 action, to:

- 6 (1) enforce any final order of the commissioner or of one (1) of
- 7 the boards;
- 8 (2) collect any penalties or fees;
- 9 (3) procure or secure compliance with this title or any other law
- 10 that the department has the duty or power to enforce;
- 11 (4) procure compliance with any standard or rule of one (1) of the
- 12 boards; ~~or~~
- 13 (5) enforce a restrictive covenant (as defined in IC 13-11-2-193.5)
- 14 **in accordance with the terms of the covenant if the covenant**
- 15 **is:**

16 **(A) executed before July 1, 2009;**

17 **(B) approved by the commissioner; and**

18 **(C) created in connection with any:**

19 **(i) remediation;**

20 **(ii) closure;**

21 **(iii) cleanup; ~~or~~**

22 **(iv) corrective action; or**

23 **(v) determination exercising enforcement discretion or**  
24 **of no further action being required;**

25 **approved by the department under this title; ~~in accordance~~**  
26 **~~with the terms of the covenant; or~~**

27 **(6) enforce a restrictive covenant (as defined in**  
28 **IC 13-11-2-193.5) in accordance with the terms of the**  
29 **covenant if the covenant is:**

30 **(A) executed after June 30, 2009; and**

31 **(B) created in connection with any of the following**  
32 **approved by the department under this title:**

33 **(i) A remediation.**

34 **(ii) A closure.**

35 **(iii) A cleanup.**

36 **(iv) A corrective action.**

37 **(v) A determination exercising enforcement discretion or**  
38 **of no further action being required.**

39 SECTION 11. IC 13-14-2-8 IS ADDED TO THE INDIANA CODE  
40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
41 1, 2009]: Sec. 8. (a) Subject to subsection (b), a restrictive covenant  
42 executed after June 30, 2009, is not subject to approval by the  
43 department.

44 **(b) The department shall:**

45 **(1) review; and**

46 **(2) approve, disapprove, or partially approve and partially**  
47 **disapprove;**

activities and land use restrictions described in IC 13-11-2-193.5(1) that are proposed as part of a remediation, closure, cleanup, corrective action, or determination exercising enforcement discretion or of no further action being required to be included in a restrictive covenant.

(c) After 2009, the department may not require the owner of a tract that has paid a fee under IC 13-19-6-2(b) or IC 13-19-6-2(c) with respect to the tract to report to the department the extent of compliance with a restrictive covenant that:

(1) applies to the tract; and

(2) is the basis of the imposition of the fee."

Page 1, after line 17, begin a new paragraph and insert:

"SECTION 13. IC 13-19-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

**Chapter 6. Institutional Control Registry and Environmental Trust Fund**

**Sec. 1. (a) The following are established:**

(1) The institutional control registry.

(2) The environmental trust fund.

(b) The operations of the institutional control registry are funded solely from the environmental trust fund.

(c) The environmental trust fund:

(1) shall be administered, held, and managed by the treasurer of state;

(2) may be used only for the purposes of this chapter; and

(3) consists of:

(A) fees deposited in the environmental trust fund under section 2 of this chapter;

(B) appropriations to the environmental trust fund from the general assembly;

(C) grants, gifts, and donations intended for deposit in the environmental trust fund; and

(D) interest, premiums, gains, or other earnings that accrue from money in the environmental trust fund.

(d) The expenses of administering the institutional control registry and the environmental trust fund shall be paid from money in the environmental trust fund. Subject to subsection (e), the treasurer of state shall invest the money in the environmental trust fund not needed to meet the current obligations related to the management of the institutional control registry in the same manner as other public money may be invested. Interest, premiums, gains, and other earnings from the investments shall be credited to the environmental trust fund. Money in the environmental trust fund at the end of a state fiscal year does not revert to the state general fund.

(e) As an alternative to subsection (d), the treasurer of state may invest or cause to be invested all or a part of the environmental

1 trust fund in a fiduciary account with a trustee that is a financial  
2 institution.

3 Sec. 2. (a) The department shall administer the institutional  
4 control registry by doing the following:

5 (1) Inventory by tract restrictive covenants throughout  
6 Indiana that are:

7 (A) recorded as described in IC 13-11-2-193.5(3),  
8 regardless of whether the restrictive covenants were  
9 recorded after 2009 or before 2010; and

10 (B) established as a part of a plan approved, determination  
11 exercising enforcement discretion made, or determination  
12 of no further action being required made by either or both  
13 of the following:

14 (i) The department.

15 (ii) The United States Environmental Protection Agency.

16 (2) Create a computerized registry by tract of restrictive  
17 covenants referred to in subdivision (1) that is accessible to  
18 the public.

19 (3) Create a computerized registry of environmental  
20 restrictive ordinances throughout Indiana.

21 (4) Give notice reasonably calculated to inform the public of  
22 the registries referred to in subdivisions (2) and (3).

23 (5) Develop a program to monitor compliance throughout  
24 Indiana with restrictive covenants referred to in subdivision  
25 (1).

26 (6) Report to the attorney general noncompliance with  
27 restrictive covenants referred to in subdivision (1).

28 (7) Collect fees under subsection (d).

29 (8) Deposit fees collected under subdivision (7) in the  
30 environmental trust fund.

31 (b) Except as provided in subsection (c), the owner of a tract  
32 subject to one (1) or more restrictive covenants:

33 (1) referred to in subsection (a)(1); and

34 (2) recorded as described in IC 13-11-2-193.5(3) after 2009;  
35 is liable for a fee in the amount of five thousand dollars (\$5,000).

36 (c) The department shall:

37 (1) establish a schedule of graduated fees; and

38 (2) consider the following to establish the fees:

39 (A) The relative costs of monitoring compliance under  
40 subsection (a)(5) among various tracts of real property  
41 subject to restrictive covenants.

42 (B) Whether the tract owner is a governmental entity.

43 (C) Whether the tract owner has developed and follows an  
44 environmental management system (such as International  
45 Organization for Standardization 14001) and agrees to  
46 provide an annual report to the department.

47 (D) Any other factor the department considers relevant in  
48 setting graduated fees.

The schedule of graduated fees established under this subsection applies instead of the fee under subsection (b) to owners of real property subject to restrictive covenants throughout Indiana that are recorded as described in IC 13-11-2-193.5(3) after the effective date of the schedule.

(d) A fee imposed under subsection (b) or (c) is payable to the department for deposit into the environmental trust fund not later than thirty (30) days after the recording of the restrictive covenant. If the fee is not paid by that deadline:

(1) the department shall provide to the attorney general the information necessary for commencement of a collection action; and

(2) the department may withhold, until the fee is paid, the department's approval of the:

(A) remediation;

(B) closure;

(C) cleanup;

(D) corrective action; or

(E) determination exercising enforcement discretion or of no further action being required;

under which the restrictive covenant was executed.

(e) The following are immune from civil or criminal liability for any act or omission related to the performance of duties under subsection (a)(1) through (a)(3):

(1) The state.

(2) Officers, agents, and employees of the state, either personally or in their official capacities.

(f) No person, including the state, the institutional control registry, a political subdivision (as defined in IC 36-1-2-13), or a private person, may rely on the accuracy and completeness of information in the following:

(1) An inventory under subsection (a)(1).

(2) A registry under subsection (a)(2) or (a)(3).

Sec. 3. (a) The department may do the following:

(1) Employ:

(A) fiscal consultants;

(B) engineers;

(C) special counsel;

(D) accountants; and

(E) any other consultants, employees, and agents;

that the department considers necessary to carry out the purposes of this chapter.

(2) Fix and pay the compensation of persons employed under subdivision (1) from money available in the environmental trust fund.

(b) Notwithstanding any other law, no direction given by the department to a political subdivision under this chapter, service provided by the department to a political subdivision under this

chapter, or other action allowed or taken by the department under this chapter is a defense for or otherwise excuses:

- (1) any act of a political subdivision that violates the law; or
- (2) any failure by a political subdivision to act as required by law.

SECTION 14. IC 13-23-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The department, under rules adopted by the underground storage tank financial assurance board under IC 4-22-2, shall use money in the excess liability trust fund, to the extent that money is available in the excess liability trust fund, to pay claims submitted to the department for the following:

- (1) The payment of the costs allowed under IC 13-23-9-2, excluding:

- (A) liabilities to third parties; and

- (B) the costs of repairing or replacing an underground storage tank;

arising out of releases of petroleum.

- (2) Providing payment of part of the liability of owners and operators of underground petroleum storage tanks:

- (A) to third parties under IC 13-23-9-3; or

- (B) for reasonable attorney's fees incurred in defense of a third party liability claim.

- (3) Reimbursement of a fee that is:

- (A) paid by the owner of a tract under IC 13-19-6-2(b) or IC 13-19-6-2(c); and

- (B) payable because the tract is subject to one (1) or more restrictive covenants established to address issues related to an underground storage tank located on the tract.

SECTION 15. IC 13-23-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The administrator of the excess liability trust fund shall process, approve, and deny requests made for payments from the excess liability trust fund under sections 2, ~~and~~ 3, ~~and~~ 3.5 of this chapter.

SECTION 16. IC 13-23-9-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3.5. (a) To receive money from the excess liability trust fund under IC 13-23-8-1(3), a claimant must submit to the administrator of the excess liability trust fund for the administrator's approval a copy of a receipt from the department for payment of a fee referred to in IC 13-23-8-1(3).

(b) If, after receiving a receipt submitted under subsection (a), the administrator determines that the receipt is valid, the administrator shall approve the request for money to be paid from the excess liability trust fund for reimbursement of the fee.

(c) The administrator shall notify the claimant of an approval or a denial of a claim made under subsection (a) not later than

1 sixty (60) days after receiving the request. Except as provided in  
 2 subsection (f), the administrator shall notify the claimant of all  
 3 reasons for a denial or partial denial.

4 (d) Not later than seven (7) days after a request is approved by  
 5 the administrator under subsection (b), the administrator shall  
 6 forward a copy of a request approved under this section to the  
 7 auditor of state.

8 (e) Not later than thirty (30) days after receiving an approved  
 9 request under this section, the auditor of state shall pay to the  
 10 claimant that submitted the approved receipt the approved amount  
 11 from money available in the excess liability trust fund.

12 (f) If the administrator denies a claim made under subsection  
 13 (a), the administrator shall notify the claimant in writing not later  
 14 than sixty (60) days after receiving the request. The claimant has  
 15 thirty (30) days after the receipt of the denial to notify the  
 16 administrator of the claimant's intention to appeal the denial. If the  
 17 claimant does not notify the administrator of an intention to appeal  
 18 in the time provided, further review of the application is not  
 19 required. If an intention to appeal is submitted within the time  
 20 provided, the administrator has thirty (30) days after the receipt  
 21 of the notice of the intention to appeal to provide the claimant with  
 22 all additional reasons for the denial or partial denial of the request  
 23 or to specify that all reasons have been provided. The claimant has  
 24 thirty (30) days after receiving notification from the administrator  
 25 of all additional reasons for the denial or partial denial or notice  
 26 specifying that all reasons have been provided to file a petition for  
 27 review of the denial or partial denial.

28 SECTION 17. IC 13-23-9-4 IS AMENDED TO READ AS  
 29 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. If the administrator  
 30 denies a request made under section 2, ~~or~~ 3, ~~or~~ 3.5 of this chapter, the  
 31 owner or operator who made the request may appeal the denial under  
 32 IC 4-21.5 to the office of environmental adjudication under  
 33 IC 4-21.5-7.

34 SECTION 18. IC 13-25-5-8.5 IS AMENDED TO READ AS  
 35 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8.5. (a) A voluntary  
 36 remediation work plan must specify the remediation objectives for the  
 37 site.

38 (b) The remediation objectives for each hazardous substance and  
 39 any petroleum on the site shall be based on:

40 (1) background levels of hazardous substances and petroleum that  
 41 occur naturally on the site; or

42 (2) an assessment of the risks pursuant to subsection (d) posed by  
 43 the hazardous substance or petroleum presently found on the site  
 44 taking into consideration the following:

45 (A) Expected future use of the site.

46 (B) Measurable risks to human health, natural resources, or the  
 47 environment based on the:

- 1 (i) activities that take place; and
- 2 (ii) environmental impact;
- 3 on the site.

4 **(c) The following apply to voluntary remediation work plans:**

5 **(1) For a voluntary remediation work plan approved by the**  
 6 **department under section 10 of this chapter before July 1,**  
 7 **2009, if the:**

8 ~~(1)~~ **(A)** nature and extent of the hazardous substance or  
 9 petroleum is adequately characterized under the voluntary  
 10 remediation work plan; and

11 ~~(2)~~ **(B)** the level of the hazardous substance or petroleum is  
 12 demonstrated to be below:

13 ~~(A)~~ **(i)** background levels of the hazardous substances and  
 14 petroleum that occur naturally on the site; or

15 ~~(B)~~ **(ii)** the risk based levels developed under subsection (d);  
 16 additional action is not necessary to protect human health or the  
 17 environment.

18 **(2) For a site that does not on July 1, 2009, have a voluntary**  
 19 **remediation work plan approved by the department under**  
 20 **section 10 of this chapter, if the:**

21 **(A) nature and extent of the hazardous substance or**  
 22 **petroleum is adequately characterized under the voluntary**  
 23 **remediation work plan, considering the remediation**  
 24 **objectives developed under this section; and**

25 **(B) the level of the hazardous substance or petroleum is**  
 26 **demonstrated to be below:**

27 **(i) background levels of the hazardous substances and**  
 28 **petroleum that occur naturally on the site; or**

29 **(ii) the risk based levels developed under subsection (d);**  
 30 **additional action is not necessary to protect human health or**  
 31 **the environment.**

32 **(d) Risk based remediation objectives shall be based on one (1) of**  
 33 **the following:**

34 **(1) Levels of hazardous substances and petroleum calculated by**  
 35 **the department using standard equations and default values for**  
 36 **particular hazardous substances or petroleum.**

37 **(2) Levels of hazardous substances and petroleum calculated**  
 38 **using site specific data for the default values in the department's**  
 39 **standard equations.**

40 **(3) For voluntary remediation work plans approved by the**  
 41 **department under section 10 of this chapter before July 1,**  
 42 **2009, levels of hazardous substances and petroleum developed**  
 43 **based on site specific risk assessments that take into account site**  
 44 **specific factors.**

45 **(4) For a site that does not on July 1, 2009, have a voluntary**  
 46 **remediation work plan approved by the department under**  
 47 **section 10 of this chapter, levels of hazardous substances and**

1       petroleum developed based on site specific risk assessments  
 2       that take into account site specific factors, including remedial  
 3       measures, restrictive covenants, and environmental restrictive  
 4       ordinances that:

5           (A) manage risk; and

6           (B) control completed or potential exposure pathways.

7       (e) For a site that does not on July 1, 2009, have a voluntary  
 8       remediation work plan approved by the department under section  
 9       10 of this chapter, the department shall consider and give effect to  
 10      restrictive covenants and environmental restrictive ordinances in  
 11      evaluating risk based remediation proposals.

12      SECTION 19. IC 13-25-5-18 IS AMENDED TO READ AS  
 13      FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) If the  
 14      commissioner issues a certificate to a person under section 16 of this  
 15      chapter, the governor shall also provide the person with a covenant not  
 16      to sue for any liability, including future liability, or a claim resulting  
 17      from or based upon the release or threatened release of a hazardous  
 18      substance or petroleum that is addressed by an approved voluntary  
 19      remediation work plan under this chapter.

20      (b) A covenant not to sue issued under this section bars suit against:

21          (1) a person who received the certificate of completion under  
 22          section 16 of this chapter; or

23          (2) any other person who receives the certificate of completion:

24           (A) through a legal transfer of the certificate of completion; or

25           (B) by acquiring property to which the certificate of  
 26          completion applies;

27      from all public or private claims arising under this title or rules adopted  
 28      under this title in connection with the release or threatened release of  
 29      a hazardous substance or petroleum that was the subject of the  
 30      approved voluntary remediation work plan, except as provided in  
 31      subsection (c).

32      (c) A covenant not to sue issued under this section may not apply to  
 33      future liability for a condition or the extent of a condition that:

34          (1) was present:

35           (A) on property that was involved in an approved and  
 36           completed voluntary remediation work plan; and

37           (B) at the time the commissioner issued the certificate of  
 38          completion under section 16 of this chapter; and

39          (2) was not known to the commissioner at the time the  
 40          commissioner issued the certificate of completion under section  
 41          16 of this chapter.

42      (d) A certificate of completion issued under section 16 of this  
 43      chapter may include conditions that must be performed or  
 44      maintained after issuance of the certificate.

45      (e) A covenant not to sue issued under this section may include  
 46      conditions that must be performed or maintained after issuance of  
 47      the covenant.



(d) (f) Except as:

- (1) provided under federal law; or
- (2) agreed to by a federal governmental entity;

a covenant not to sue issued under this section may not release a person from liability to the federal government for claims based on federal law.

(e) (g) After an applicant and the department have signed a voluntary remediation agreement, a person may not bring an action, including an administrative action, against the applicant or any other person proceeding under this chapter on behalf of the applicant for any cause of action arising under this title or rules adopted under this title and relating to the release or threatened release of a hazardous substance or petroleum that is the subject of the agreement. However, this section does not apply if:

- (1) the applicant fails to file a proposed voluntary remediation work plan within the time period established in section 8(a)(8) of this chapter;
- (2) the commissioner rejects a proposed voluntary remediation work plan submitted in good faith and the rejection is upheld in any appeal brought under section 12 of this chapter;
- (3) the applicant or another person proceeding under this chapter on behalf of the applicant fails to complete a voluntary remediation in accordance with an approved voluntary remediation work plan; or
- (4) the commissioner withdraws the commissioner's approval of the voluntary remediation work plan and the withdrawal is upheld in any appeal under section 19 of this chapter.

However, if the commissioner withdraws approval of the plan under section 19(a)(2) of this chapter, the commissioner may bring an action, including an administrative action, against the applicant.

(f) (h) A person who purchases property that is the subject of a voluntary remediation agreement at the time the property is purchased may not be subject to an enforcement action to the same extent as an applicant under subsection (e): (g).".

Page 2, after line 33, begin a new paragraph and insert:

"SECTION 21. IC 34-30-2-51.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 51.5. IC 13-19-6-2(e) (Concerning actions relating to the institutional control registry).**

SECTION 22. IC 36-1-2-4.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 4.7. "Environmental restrictive ordinance" means, with respect to land, any ordinance that:**

- (1) is adopted by a municipal corporation; and**
- (2) limits, regulates, or prohibits one (1) or more of the following with respect to groundwater:**
  - (A) Withdrawal.**

1                   **(B) Human consumption.**

2                   **(C) Any other use.**

3           SECTION 23. IC 36-1-6-11 IS ADDED TO THE INDIANA CODE  
4 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
5 1, 2009]: **Sec. 11. (a) The legislative body of a municipal**  
6 **corporation shall:**

7                   **(1) subject to subsection (b), give written notice to the**  
8 **department of environmental management not later than**  
9 **sixty (60) days before amendment or repeal of an**  
10 **environmental restrictive ordinance; and**

11                   **(2) give written notice to the department of environmental**  
12 **management not later than thirty (30) days after passage,**  
13 **amendment, or repeal of an environmental restrictive**  
14 **ordinance.**

15                   **(b) Upon written request by the legislative body, the department**  
16 **of environmental management may waive the notice requirement**  
17 **of subsection (a)(1).**

18                   **(c) An environmental restrictive ordinance passed or amended**  
19 **after 2009 by the legislative body must state the notice**  
20 **requirements of subsection (a).**

21                   **(d) The failure of an environmental restrictive ordinance to**  
22 **comply with subsection (c) does not void the ordinance.**

23           SECTION 24. IC 36-2-4-8 IS AMENDED TO READ AS  
24 FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8. (a) An ordinance,**  
25 **order, or resolution is considered adopted when it is signed by the**  
26 **presiding officer. If required, an adopted ordinance, order, or resolution**  
27 **must be promulgated or published according to statute before it takes**  
28 **effect.**

29                   **(b) An ordinance prescribing a penalty or forfeiture for a violation**  
30 **must, before it takes effect, be published once each week for two (2)**  
31 **consecutive weeks, according to IC 5-3-1. However, if such an**  
32 **ordinance is adopted by the legislative body of a county subject to**  
33 **IC 36-2-3.5 and there is an urgent necessity requiring its immediate**  
34 **effectiveness, it need not be published if:**

35                   **(1) the county executive proclaims the urgent necessity; and**

36                   **(2) copies of the ordinance are posted in three (3) public places in**  
37 **each of the districts of the county before it takes effect.**

38                   **(c) The following apply in addition to the other requirements of this**  
39 **section:**

40                   **(1) An ordinance or resolution passed by the legislative body of**  
41 **a county subject to IC 36-2-3.5 is considered adopted only if it is:**

42                   ~~(1)~~ **(A) approved by signature of a majority of the county**  
43 **executive;**

44                   ~~(2)~~ **(B) neither approved nor vetoed by a majority of the**  
45 **executive, within ten (10) days after passage by the legislative**  
46 **body; or**

47                   ~~(3)~~ **(C) passed over the veto of the executive by a two-thirds**

- 1 (2/3) vote of the legislative body, within sixty (60) days after  
 2 presentation of the ordinance or resolution to the executive.
- 3 **(2) The legislative body of a county shall:**
- 4 **(A) subject to subdivision (3), give written notice to the**  
 5 **department of environmental management not later than**  
 6 **sixty (60) days before amendment or repeal of an**  
 7 **environmental restrictive ordinance; and**
- 8 **(B) give written notice to the department of environmental**  
 9 **management not later than thirty (30) days after passage,**  
 10 **amendment, or repeal of an environmental restrictive**  
 11 **ordinance.**
- 12 **(3) Upon written request by the legislative body, the**  
 13 **department of environmental management may waive the**  
 14 **notice requirement of subdivision (2)(A).**
- 15 **(4) An environmental restrictive ordinance passed or**  
 16 **amended after 2009 by the legislative body must state the**  
 17 **notice requirements of subdivision (2).**
- 18 **(5) The failure of an environmental restrictive ordinance to**  
 19 **comply with subdivision (4) does not void the ordinance.**
- 20 (d) After an ordinance or resolution passed by the legislative body  
 21 of a county subject to IC 36-2-3.5 has been signed by the presiding  
 22 officer, the county auditor shall present it to the county executive, and  
 23 record the time of the presentation. Within ten (10) days after an  
 24 ordinance or resolution is presented to it, the executive shall:
- 25 (1) approve the ordinance or resolution, by signature of a majority  
 26 of the executive, and send the legislative body a message  
 27 announcing its approval; or
- 28 (2) veto the ordinance or resolution, by returning it to the  
 29 legislative body with a message announcing its veto and stating  
 30 its reasons for the veto.
- 31 (e) This section does not apply to a zoning ordinance or amendment  
 32 to a zoning ordinance, or a resolution approving a comprehensive plan,  
 33 that is adopted under IC 36-7.
- 34 (f) An ordinance increasing a building permit fee on new  
 35 development must:
- 36 (1) be published:
- 37 (A) one (1) time in accordance with IC 5-3-1; and
- 38 (B) not later than thirty (30) days after the ordinance is  
 39 adopted by the legislative body in accordance with IC 5-3-1;  
 40 and
- 41 (2) delay the implementation of the fee increase for ninety (90)  
 42 days after the date the ordinance is published under subdivision  
 43 (1).
- 44 SECTION 25. IC 36-3-4-14 IS AMENDED TO READ AS  
 45 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) An ordinance  
 46 or resolution passed by a legislative body is considered adopted when  
 47 it is:

(1) signed by the presiding officer; and  
 (2) if subject to veto, either approved by the executive or passed over ~~his~~ **the executive's** veto by the legislative body, under section 16 of this chapter.

(b) All ordinances and resolutions of a legislative body are subject to veto, except the following:

(1) An ordinance or resolution, or part of either, providing for the budget or appropriating money for an office or officer of the county provided for by the Constitution of Indiana or for a judicial office or officer.

(2) An ordinance or resolution approving or modifying the budget of a political subdivision that the legislative body is permitted by statute to review.

(3) A resolution making an appointment that the legislative body is authorized to make.

(4) A resolution selecting officers or employees of the legislative body.

(5) A resolution prescribing rules for the internal management of the legislative body.

(6) A zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(c) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1, unless:

(1) it is published under subsection (d); or

(2) there is an urgent necessity requiring its immediate effectiveness, the executive proclaims the urgent necessity, and copies of the ordinance are posted in three (3) public places in the county.

(d) If a legislative body publishes any of its ordinances in book or pamphlet form, no other publication is required. If an ordinance prescribing a penalty or forfeiture for a violation is published under this subsection, it takes effect two (2) weeks after the publication of the book or pamphlet. Publication under this subsection, if authorized by the legislative body, constitutes presumptive evidence:

(1) of the ordinances in the book or pamphlet;

(2) of the date of adoption of the ordinances; and

(3) that the ordinances have been properly signed, attested, recorded, and approved.

(e) Unless a legislative body provides in an ordinance or resolution for a later effective date, the ordinance or resolution takes effect when it is adopted, subject to subsections (c) and (d).

(f) Subsections (a), (c), (d), and (e) do not apply to zoning ordinances or amendments to zoning ordinances, or resolutions approving comprehensive plans, that are adopted under IC 36-7.

**(g) The legislative body shall:**

(1) subject to subsection (h), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and

(2) give written notice to the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.

(h) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subsection (g)(1).

(i) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (g).

(j) The failure of an environmental restrictive ordinance to comply with subsection (i) does not void the ordinance.

SECTION 26. IC 36-4-6-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) An ordinance, order, or resolution passed by the legislative body is considered adopted when it is:

(1) signed by the presiding officer; and

(2) either approved by the city executive or passed over ~~his~~ **the executive's** veto by the legislative body, under section 16 of this chapter.

If required by statute, an adopted ordinance, order, or resolution must be promulgated or published before it takes effect.

(b) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1, unless:

(1) it is published under subsection (c); or

(2) there is an urgent necessity requiring its immediate effectiveness, the city executive proclaims the urgent necessity, and copies of the ordinance are posted in three (3) public places in each of the districts from which members are elected to the legislative body.

(c) Except as provided in subsection (e), if a city publishes any of its ordinances in book or pamphlet form, no other publication is required. If an ordinance prescribing a penalty or forfeiture for a violation is published under this subsection, it takes effect two (2) weeks after the publication of the book or pamphlet. Publication under this subsection, if authorized by the legislative body, constitutes presumptive evidence:

(1) of the ordinances in the book or pamphlet;

(2) of the date of adoption of the ordinances; and

(3) that the ordinances have been properly signed, attested, recorded, and approved.

(d) This section does not apply to a zoning ordinance or amendment

to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(e) An ordinance increasing a building permit fee on new development must:

(1) be published:

(A) one (1) time in accordance with IC 5-3-1; and

(B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and

(2) delay the implementation of the fee increase for ninety (90) days after the date the ordinance is published under subdivision (1).

**(f) The legislative body shall:**

**(1) subject to subsection (g), give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and**

**(2) give written notice to the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.**

**(g) Upon written request by the legislative body, the department of environmental management may waive the notice requirement of subsection (f)(1).**

**(h) An environmental restrictive ordinance passed or amended after 2009 by the legislative body must state the notice requirements of subsection (f).**

**(i) The failure of an environmental restrictive ordinance to comply with subsection (h) does not void the ordinance.**

SECTION 27. IC 36-5-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) An ordinance, order, or resolution passed by the legislative body is considered adopted when it is signed by the executive. If required by statute, an adopted ordinance, order, or resolution must be promulgated or published before it takes effect.

(b) An ordinance prescribing a penalty for a violation must, before it takes effect, be published in the manner prescribed by IC 5-3-1, unless:

(1) it is published under IC 36-1-5; or

(2) it declares an emergency requiring its immediate effectiveness and is posted in:

(A) one (1) public place in each district in the town; or

(B) a number of public places in the town equal to the number of town legislative body members, if the town has abolished legislative body districts under section 4.1 of this chapter.

(c) This section does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan,

1 that is adopted under IC 36-7.

2 (d) An ordinance increasing a building permit fee on new  
3 development must:

4 (1) be published:

5 (A) one (1) time in accordance with IC 5-3-1; and

6 (B) not later than thirty (30) days after the ordinance is  
7 adopted by the legislative body in accordance with IC 5-3-1;  
8 and

9 (2) delay the implementation of the fee increase for ninety (90)  
10 days after the date the ordinance is published under subdivision

11 (1).

12 **(e) The legislative body shall:**

13 **(1) subject to subsection (f), give written notice to the**  
14 **department of environmental management not later than**  
15 **sixty (60) days before amendment or repeal of an**  
16 **environmental restrictive ordinance; and**

17 **(2) give written notice to the department of environmental**  
18 **management not later than thirty (30) days after passage,**  
19 **amendment, or repeal of an environmental restrictive**  
20 **ordinance.**

21 **(f) Upon written request by the legislative body, the department**  
22 **of environmental management may waive the notice requirement**  
23 **of subsection (e)(1).**

24 **(g) An environmental restrictive ordinance passed or amended**  
25 **after 2009 by the legislative body must state the notice**  
26 **requirements of subsection (e).**

27 **(h) The failure of an environmental restrictive ordinance to**  
28 **comply with subsection (g) does not void the ordinance.**

29 **SECTION 28. [EFFECTIVE JULY 1, 2009] (a) The department**  
30 **of environmental management shall do the following:**

31 **(1) Conduct a study to develop recommendations for policies**  
32 **and legislation necessary to impose fees as described in**  
33 **IC 13-19-6-2, as added by this act, with respect to:**

34 **(A) real property covenants that meet the description of a**  
35 **restrictive covenant under IC 13-11-2-193.5, as in effect**  
36 **before the effective date of this act, that were recorded**  
37 **before 2010; and**

38 **(B) real property covenants that meet the description of a**  
39 **restrictive covenant under IC 13-11-2-193.5, either as**  
40 **amended by this act or as in effect before the effective date**  
41 **of this act, except that they are not imposed as a part of a**  
42 **plan, or a determination exercising enforcement discretion**  
43 **or of no further action being required, approved by either**  
44 **or both of the following:**

45 **(i) The department of environmental management.**

46 **(ii) The United States Environmental Protection Agency.**

47 **(2) Conduct a study and develop recommendations**  
48 **concerning the feasibility of incorporating notice of:**

- 1           **(A) restrictive covenants (as defined in IC 13-11-2-193.5, as**  
2           **amended by this act); and**  
3           **(B) environmental restrictive ordinances (as defined in**  
4           **IC 36-1-2-4.7, as added by this act);**  
5           **into the "One Call" system managed by the Indiana**  
6           **Underground Plant Protection Service under IC 8-1-26.**  
7           **(3) Before September 1, 2010, report the results of the studies**  
8           **under subdivisions (1) and (2) to the environmental quality**  
9           **service council.**  
10          **(b) This SECTION expires January 1, 2011."**  
11          Renumber all SECTIONS consecutively.  
            (Reference is to EHB 1162 as printed March 25, 2009.)

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Senator GARD